

1 We think the customers in these areas might be
2 comforted to know that for many years U.S. West paid real
3 estate taxes based on the value of the total telephone plant
4 they own. Morristown and Timber Lake have received their
5 share of these real estate taxes. There is some question as
6 to whether they were legally entitled to do so. U.S. West
7 informed Owl River that when it paid these real estate
8 taxes, no distinction was made between on-reservation and
9 off-reservation land.

10 Technically, U.S. West was not legally
11 obligated to pay in real estate taxes on the real estate it
12 owned, which was located on the Cheyenne River and Standing
13 Rock Reservation. Thus, the affected counties will not be
14 losing any taxes to which they would not otherwise be
15 entitled and in the past shouldn't have been entitled. It
16 is possible that if the Cheyenne River Sioux Tribe wanted,
17 it can sue for back taxes U.S. West paid on the real estate
18 located on the reservation as well as Standing Rock Sioux
19 Tribe also.

20 Q Many customers in the Nisland, Morristown, and
21 Timber Lake Exchanges asked about representation on Owl
22 River Telephone, Incorporated, board of directors. Please
23 discuss how this organization will operate.

24 A Six members of the telephone authority board of
25 directors will serve as the Owl River Telephone, Inc.

1 board of directors. Under Owl River's Articles of
2 Incorporation and bylaws, elections for officers will be
3 held and the officers will serve a four-year term.
4 Owl River Telephone, Inc., is not a cooperative and its
5 ownership can be compared to that of an organization such as
6 U.S. West. The Cheyenne River Sioux Tribe owned Owl River
7 Telephone, thus, it retains the sole authority to decide
8 who will serve on the board of directors.

9 Owl River Telephone, Inc., will administer
10 and manage the new exchanges according to board
11 policy. As does U.S. West, the board will decide where
12 profits will be allocated.

13 Q Does Owl River have any future plans to
14 implement technological advancements in the Nisland,
15 Morristown, and Timber Lake Exchanges?

16 A We think that is a key factor in what was mentioned
17 in the previous questions where the profits would go. We
18 think Cheyenne River Telephone Authority and the parent
19 company has very well demonstrated that the investment is
20 going back to the community in plant and economic
21 development projects and also to its subscribers. Owl River
22 Telephone will be in the forefront of the new
23 telecommunication developments as have its parent
24 company, the telephone authority. In conjunction with its
25 engineering firm, the company will evaluate the weak

1 it's one of the things that the Public Utilities Commission
2 will be very concerned about is the opposition to this
3 purchase by the intervenors is not -- (Inaudible.) Do you
4 feel that is what's going on? Let me rephrase it. If I
5 were to direct my questions to taxes, rates, representation
6 on Owl River and control by Public Utilities Commission, you
7 don't think that any of those things are racially-motivated,
8 do you?

9 THE WITNESS: No.

10 MR. ABERLEE: If at any point I begin to ask
11 you questions which you believe are racial-motivated, would
12 you please tell me?

13 THE WITNESS: I can do that.

14 MR. ABERLEE: First of all, there has been a
15 lot of discussion about taxes and the effect that it's going
16 to have upon the various communities, school districts, and
17 counties. That will not be required to be taken out with
18 regard to the Timber Lake Exchange; is that correct?

19 THE WITNESS: That's correct.

20 MR. ABERLEE: Basically, there will be no taxes
21 paid?

22 THE WITNESS: Correct.

23 MR. ABERLEE: And I believe your statement was
24 that even though the United States Supreme Court has ruled
25 that gross receipts taxes and sales taxes may be collected

1 on sales to non-members, non-members of the tribe, the
2 Cheyenne River Sioux Tribe or Owl River Telephone does not
3 intend to pay those taxes; is that correct?

4 THE WITNESS: I guess that we are open to
5 negotiating with the state if they want to collect those
6 taxes.

7 MR. ABERLEE: But at this point there is no
8 such agreement? You do not intend to pay those; correct?

9 THE WITNESS: That's correct.

10 MR. ABERLEE: Because there is no enforcement
11 mechanism?

12 THE WITNESS: That's correct.

13 MR. ABERLEE: I'd like to go over some of the
14 taxes which will be lost in the city of Timber Lake. I
15 think you've reviewed the figures that were published in the
16 Timber Lake Copy, basically showing that the city of Timber
17 Lake would lose 80 percent of its tax base; is that correct?

18 THE WITNESS: According to the newspaper
19 article, yes.

20 MR. ABERLEE: Have you checked the accuracy of
21 the figures?

22 THE WITNESS: No, we haven't. The reason that
23 is -- Again, coming from my testimony, it's going to take a
24 great deal of effort to check that to see what plants has
25 invested in Indian land or Indian country to come up with

1 Mr. Chairman, again, I would like an
2 opportunity to review this document and be prepared to
3 answer that and perhaps that will assist you in making a
4 decision.

5 THE CHAIRMAN: Are you prepared to answer this
6 more definitively on June first and second?

7 THE WITNESS: I feel we will be.

8 THE CHAIRMAN: That's satisfactory, Mr.
9 Aberlee?

10 MR. ABERLEE: With regard to collection of tax
11 revenues in the Mc -- Excuse me, the Morristown area, that
12 would be on the Standing Rock Indian Reservation; correct?

13 THE WITNESS: Correct.

14 MR. ABERLEE: And there potentially would be
15 legal issues whether or not another tribe could be taxed on
16 another Indian reservation; correct?

17 THE WITNESS: Correct.

18 MR. ABERLEE: And even though you are here
19 today saying that the Owl River Telephone Corporation
20 intends to be paying gross receipts tax in Morristown, that
21 could easily change, couldn't it?

22 THE WITNESS: Very possibly so. We may have to
23 pay the Standing Rock Sioux Tribe gross receipts tax to them
24 on the portion that they control through the exchange.

25 MR. ABERLEE: But it may also change that you

1 would no longer pay a gross receipts tax to the state of
2 South Dakota, which would go on to fund education in Corson
3 County; isn't that correct?

4 THE WITNESS: In a portion of Morristown
5 Exchange it falls outside of Indian country, we have to pay
6 gross receipts sales tax, which is approximately a third of
7 the Morristown Exchange area.

8 MR. ABERLEE: But it would be your position
9 that the portion of the Morristown Exchange in South Dakota
10 is entirely within Indian country; correct?

11 THE WITNESS: Correct.

12 MR. ABERLEE: And, therefore, not subject to
13 the gross receipts tax?

14 THE WITNESS: Correct.

15 MR. ABERLEE: Okay. So that money would be
16 lost for education in Corson County as well?

17 THE WITNESS: A portion could be if the state
18 so deems it to work up an agreement to collect from members
19 of the nonIndians that portion would be recoverable.

20 MR. ABERLEE: And there may be questions on the
21 collection of real estate taxes or other taxes in Nisland
22 that may arise at some point in time; correct?

23 THE WITNESS: Not according to the memorandum
24 of law that we have researched. We owe it as gross receipts
25 taxes as any other cooperative would owe.

1 MR. ABERLEE: So the main thing, we've got the
2 possibility of at least two lawsuits looming in the horizon,
3 and those are, number one, the collection of gross receipts
4 tax in the Timber Lake Exchange where you say absent some
5 type of collection agreement, it is not going to be paid
6 because there's no enforcement mechanism, even though the
7 Supreme Court has said that can be collected.

8 Then in Corson County there is a possibility of
9 a second lawsuit involving the taxing jurisdiction of Corson
10 County in the state of South Dakota relating to the Owl
11 River Telephone Corporation being within Indian country
12 again; correct?

13 THE WITNESS: Could be. Could be also.

14 MS. DUCHENEAUX: Mr. Chairman, I'm going to
15 advise my client that he is not to answer that. We have not
16 discussed the potential lawsuits that may arise out of any
17 of these purchases. And Mr. Williams is not in the position
18 to answer that. As Mr. Aberlee, said the Supreme Court said
19 these taxes can be collected, but they didn't provide the
20 states with the mechanism for collection. That's where the
21 Sioux River Tribe will likely enter into whatever agreements
22 that are necessary that do not compromise the sovereign
23 jurisdiction to collect taxes and regulate.

24 I think that, again, these issues could be
25 better reserved and presented to the Commission so that they

1 THE WITNESS: It may well. There's no
2 guarantees to that.

3 MR. FERGEL: No guarantees. I have no further
4 questions.

5 THE CHAIRMAN: Mr. Hoshek?

6 MR. HOSHEK: No questions from the staff,
7 Commissioners.

8 MR. BURG: I have two quick ones. One is, is
9 there any method by which a nontribal member could become on
10 the board of directors of the CRST?

11 THE WITNESS: We have had non-members on the
12 board before. And the way it's done is it's kind of an open
13 process that people can apply and submit applications to the
14 tribal council or be nominated in these districts. Since
15 I've been there from '82, no nonIndian has been on the
16 board.

17 MR. BURG: But is there anything that prohibits
18 that?

19 THE WITNESS: No.

20 MR. BURG: So a nontribal member would have an
21 opportunity to attempt to be seated on the board; is that
22 correct?

23 THE WITNESS: Correct.

24 MR. BURG: The other question is do you charge
25 all the CRST members the same basic telephone rate?

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1 BEFORE THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF SOUTH DAKOTA

3

4
IN THE MATTER OF THE SALE TC-94-122
OF CERTAIN TELEPHONE EXCHANGES
BY U S WEST COMMUNICATIONS, INC.
TO CERTAIN TELECOMMUNICATIONS
COMPANIES IN SOUTH DAKOTA

7 Kings Inn
8 Pierre, SD
9 June 2, 1995
9:00 o'clock a.m.
10
11 H E A R I N G
(Volume II)
12
13 BEFORE: Mr. Ken Stofferahn, Chairman
Mr. Jim Burg, Vice-Chairman
Ms. Laska Schoenfelder, Commissioner

14 Ms. Rolayne Alts Miest, General Counsel
15 Public Utilities Commission
16 State Capitol
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2 WITNESS	EXAMINATION	
3 (The hearing reconvened 6-2-95 at the hour of		
4 8:30 o'clock a.m.)		
5 CHAIRMAN STOFFERAHN: I'll give you the		
6 schedule for the day as nearly as we can figure		
7 it out. And we're going to have make some		
8 changes as time goes on, but we'll try to hold		
9 very close to it. I think first off we'll pick		
10 up the Department of Revenue people that are		
11 here. I think they're witnesses for you,		
12 Mr. Todd, and staff may want to do some direct		
13 with them also, I think.		
14 Number two, CRST and the intervenors will		
15 be next, and hopefully we'll hang in there		
16 fairly good with the time schedule. I'm sure		
17 we won't make it by 9:00, but as soon as we		
18 can.		
19 And then we want to work in the rest of		
20 the Mobridge exchange with Mr. Barfield after		
21 that, and we're going to try and recess for		
22 lunch right at noon because then we need to		
23 take up the Beresford, Alcester case as near to		
24 1:00 as we can. And then we want to try and		
25 work in West River, Bison before 5:00. And so		
somewhere in the afternoon we may make some		
adjustments, but we'll try to hold as close to		

1 MS. DUCHENEAUX: Yes, ma'am.
 2 MR. WELK: Hearing Officer, yesterday the
 3 Commission asked that Mr. Barton provide to the
 4 Commission his work papers regarding any
 5 estimates that he'd ever done on property
 6 taxes. I have had that marked as 126. That
 7 will also be distributed to the Commission and
 8 others. I don't know whether you want him
 9 available for any questions, if you're heard
 10 enough, but I want the record to reflect we've
 11 complied with the Commission's request and he
 12 will stay here until the Commission wants him
 13 to leave if you have any questions.
 14 MS. WIEST: Are there any objections to
 15 that exhibit being offered?
 16 MR. TODD: I would only ask that we have
 17 enough time to review that before he has a
 18 chance to leave. I don't know if I would have
 19 any questions on it until I review it.
 20 MR. WELK: Mr. Barton will be here.
 21 MS. WIEST: That exhibit has been
 22 received.
 23 MR. WATSON: Ms. Wiest, yesterday AT&T was
 24 asked to produce the tariff, the NECA tariff
 25 and we have copies available. I can't remember

1 A. That's correct.
 2 Q. And that testimony is on the record?
 3 A. That's correct.
 4 Q. And the testimony that you'll be presenting
 5 today is for what purpose?
 6 A. The testimony today is to give additional
 7 facts. There was questions raised at other PUC
 8 hearings that we did tell the folks that we
 9 would bring additional information to try to
 10 clarify some of those questions, and so that's
 11 the purpose of testifying, some additional
 12 information.
 13 Q. Now, in addition to that testimony you will be
 14 offering some exhibits. Is that correct?
 15 A. That is correct.
 16 Q. Okay. The way that we will handle that, if
 17 it's all right with the PUC, is as Mr. Williams
 18 discusses that particular document we will,
 19 after he concludes that, offer it at that
 20 time. So if you want to go ahead then, J D.
 21 A. This is a statement of Owl River Telephone,
 22 Inc., concerning the acquisition of the Timber
 23 Lake, Morristown and McIntosh exchanges.
 24 Owl River Telephone, Inc., is seeking the
 25 Public Utilities Commission's approval of its

1 who asked for us to provide that, but someone
 2 asked and we had it faxed in. We had it faxed
 3 in. So I don't know what the next exhibit
 4 number is.
 5 MS. WIEST: Why don't you just give it to
 6 Karen and then we'll get a number.
 7 MR. WATSON: Okay.
 8 J. D. WILLIAMS,
 9 called as a witness, being first duly sworn,
 10 testified and said as follows:
 11 MS. DUCHENEAUX: Should be proceed?
 12 MS. WIEST: Go ahead.
 13 DIRECT EXAMINATION BY MS. DUCHENEAUX:
 14 Q. Would you state your name, address, place of
 15 employment and your position and a little bit
 16 of background about yourself?
 17 A. My name is J. D. Williams. I'm general manager
 18 with CRST Telephone Authority. I've worked
 19 there since 1982. I was general manager - I
 20 have been general manager since 1986. I've got
 21 a business administration degree from Black
 22 Hills State University. My address is P.O.
 23 Box 369, Faith, South Dakota.
 24 Q. Now, you've testified twice before the PUC
 25 leading up to this hearing, haven't you?

1 purchase of the Timber Lake, Morristown, and
 2 McIntosh telephone exchanges. The company
 3 presents additional testimony that is important
 4 to the decision process.
 5 Number one, we offer the petition from the
 6 McIntosh exchange area that contains over 50
 7 signatures supporting the sale of the three
 8 exchanges, Timber Lake, Morristown and McIntosh
 9 to CRST Telephone Authority. We enter this as
 10 evidence. We enter this as evidence. In the
 11 Mobridge and McIntosh PUC hearings held earlier
 12 this spring we have seen petitions filed which
 13 were against the sale of these three exchanges
 14 to CRST Telephone Authority.
 15 We have seen the audiences in both PUC
 16 hearings demonstrate their opposition by
 17 standing and holding their hands as cued by
 18 their legal counsel. We have heard testimony
 19 that indicated that 100 percent of the people
 20 were against the sale. Until a person looks at
 21 the entire picture these types of
 22 demonstrations seem to have validity.
 23 Both the Mayor of McIntosh and the
 24 Chairman of the Corson County Commissioners
 25 indicated in their McIntosh testimony that they

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1 involved in looking at interactive video
2 service to our area, rural tele-medicine,
3 considering those types of issues much like
4 everybody else has. And I think that fact is
5 proven that we've had digital switching in
6 place in all five exchanges since 1986.

7 We also have over 80 miles of fiber-optic
8 cable and we're joined up with South Dakota
9 Network and very much players in the
10 associations in the telecommunication
11 business.

12 I think that we have a commitment to rural
13 economic development, and that's very much
14 demonstrated by what we're doing now with the
15 CRST Telephone Authority organization and I
16 believe that that would be a positive for the
17 new areas that we will hopefully be going into
18 under the Owl River Telephone organization.

19 Q. J. D., with regard to the question of taxes,
20 has the Cheyenne River Telephone Authority ever
21 paid any kind of taxes to Dewey or Ziebach
22 county for having telephone service there?

23 A. No. CRST Telephone Authority has not paid any
24 taxes.

25 Q. And didn't you testify I think at both of the

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1 previous hearings that the City of Eagle Butte
2 is considered to be the third -- at least in
3 1994 -- the third fastest growing city in the
4 State of South Dakota?

5 A. Correct.

6 Q. You did. And do you think that that reflects
7 an adverse impact by the lack of taxes or the
8 payment of taxes by the Cheyenne River
9 Telephone Authority?

10 A. My personal opinion is that it has not.

11 MS. DUCHENEAUX: Thank you. No more
12 questions.

13 MS. WIEST: Any cross, Mr. Hoseck?

14 MR. HOSECK: Yes.

15 CROSS-EXAMINATION MR. HOSECK:

16 Q. Mr. Williams, with regard to the testimony that
17 you just completed, is it true that Owl River
18 Telephone operates in the form of a
19 corporation?

20 A. Tribal corporation, correct.

21 Q. Okay. And you just testified about the various
22 items in Senate Bill 240 that this Commission
23 is to look at in considering the approval of
24 this sale. The question I have is: What
25 actions have been taken by Owl River Telephone

1 Corporation to demonstrate a commitment by that
2 business entity to meet those criteria in
3 Senate Bill 240?

4 A. The question is is what steps have we taken to
5 satisfy those?

6 Q. Yes. In other words, what formal action has
7 been taken by Owl River Telephone Corporation?

8 A. I believe the first step in the matter of the
9 memorandum of understanding is that we have
10 taken that step, our tribal council concurred,
11 and we have submitted it to the PUC for their
12 consideration.

13 The taxation issue we have proposed to
14 you, and to the PUC, that we are willing to pay
15 as per the formula of the gross receipts sales
16 tax only with the proration of population
17 considered. I believe the other requirements
18 are very much demonstrated like the rest of the
19 independent telephone companies that we have to
20 look at the history of what we've done in the
21 past, submit that as testimony, and I believe
22 that that has done that. And I believe that
23 that history is comparable to those other
24 organizations.

25 Q. Specifically what I'm interested in is whether

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1 or not the corporation, or the board of
2 directors more particularly, of this
3 corporation have adopted any resolutions,
4 business plans or have any contingent
5 construction plans should the sale be
6 approved. In other words, has there been any
7 official action by the corporate board of
8 directors addressing these issues in those
9 particular forms?

10 A. Specific plans have not been developed. And
11 the reason for that is, as well as the other
12 telephone companies know that there's been a
13 considerable amount of time and work in just
14 preparing for testimonies, the hearings,
15 securing financing, getting the corporation
16 together, besides running your other business.

17 And the way we do it with our CRST
18 Telephone Authority organization is is that we
19 have a very detailed 5-year and 10-year plan
20 for our projects into the future. And I'm sure
21 that that is, as we go down the road here and
22 as time goes on, that that will transpire as we
23 do in the CRST Telephone Authority.

24 Q. So that we're clear on this point. As we sit
25 here today the 5- and 10-year plans have not

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1 been altered and there's not been any
 2 contingent alteration of those plans as to what
 3 would occur should this sale be approved. Is
 4 that correct?
 5 A. That's correct.
 6 Q. Okay. On another issue, could you tell the
 7 Commission what the plans are of Owl River
 8 Telephone, Incorporated, should the sale be
 9 approved with regard to continuing any local
 10 measured service that is currently in place?
 11 A. Could you repeat the last part of that
 12 question?
 13 Q. In other words, what, if this sale is approved,
 14 what are your plans as far as continuing any
 15 local measured service?
 16 A. Our immediate plans would leave the local rates
 17 as they are for an 18-month period. Our
 18 financial projections have been done on the
 19 loan payment at the local rates as they are
 20 currently. We don't see any change from that
 21 pending, you know, unforeseen circumstances.
 22 Q. And if there is a telephone assistance plan in
 23 operation right now at any of the exchanges
 24 that you propose to acquire, would it also be
 25 your intent to continue that telephone

1 A. No, we have not.
 2 Q. Have you requested that such negotiations
 3 begin?
 4 A. No, we have not. We have submitted it to the
 5 Public Utility Commission for their comment
 6 back, and I'm sure that those type of steps
 7 will be taken in the future.
 8 Q. Have you initiated any actions with the
 9 legislature or any legislative body of this
 10 state regarding the entering into such a
 11 memorandum of understanding or agreement or
 12 treaty?
 13 A. The only action that we've taken with any
 14 regulatory body is the concurrence by the
 15 Cheyenne River Sioux Tribe.
 16 Q. And is it your position that you believe that
 17 the Public Utilities Commission is authorized
 18 to enter into a treaty or an agreement with the
 19 tribes or tribal authorities?
 20 A. I think that's a legal opinion.
 21 MS. DUCHENEAUX: I object. That calls for
 22 a conclusion of law that I'm sure Mr. --
 23 MR. HOSECK: I asked him what his belief
 24 is as to whether or not the Public Utilities
 25 Commission is authorized to enter into such an

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1 assistance plan?
 2 A. I'm sure they would be looked at very
 3 seriously.
 4 Q. Well, is it your intent to continue it or not?
 5 A. Yes.
 6 Q. Mr. Williams, following your testimony on
 7 May 25 in McIntosh, with regard to the proposed
 8 sales of Morristown, McIntosh and Timber Lake,
 9 at that meeting, you alluded to it today, you
 10 proposed that there had been a couple of
 11 proposals made. One with regard to a
 12 memorandum of understanding that you proposed
 13 to enter into with the Public Utilities
 14 Commission addressing issues of regulation and
 15 complaints. The second one deals with the
 16 issue of replacement of lost tax revenues.
 17 With regard to this first issue, at this
 18 point in time, and when I say the first issue
 19 I'm talking about the proposal for regulation
 20 or handling of complaints as to service or
 21 quality of service. With regard to that
 22 particular issue. Have you entered into any
 23 negotiations with the governor of South Dakota
 24 regarding this proposed memorandum of
 25 understanding regarding regulatory control?

1 agreement.
 2 MS. DUCHENEAUX: The same objection.
 3 MS. WIEST: Sustained.
 4 Q. Mr. Williams, have you been advised on the
 5 issue, advised by legal counsel on the issue of
 6 whether or not the Public Utilities Commission
 7 has the authority to enter into an agreement
 8 with the Cheyenne River Sioux Telephone
 9 Authority or Owl River Telephone?
 10 MR. WELK: Objection. That calls for a
 11 privileged communication.
 12 MR. HOSECK: No. It's just asking whether
 13 or not it has been advised. I haven't asked
 14 what the advice is.
 15 MS. DUCHENEAUX: I would make the same
 16 objection, but thank you for jumping in here.
 17 MS. WIEST: Overruled. You can just state
 18 if you sought that advice.
 19 THE WITNESS: What was that?
 20 MS. WIEST: The objection was overruled.
 21 A. It has been discussed. I think it is a legal
 22 opinion, of course, but we have submitted that,
 23 like I said, to the PUC. I believe it's their
 24 responsibility to take that on through the
 25 channels if it is to the state legislature or

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1 to the governor's office. We'll assist in any
 2 manner that we can, but I think that's some of
 3 the next steps that need to be taken.
 4 Q. With regard to the second issue in the proposed
 5 agreement, is it true that you're proposing to
 6 enter into an agreement for the collection of
 7 gross receipts tax in the exchanges that we're
 8 talking about here?
 9 A. Correct.
 10 Q. And have you entered into any negotiations, for
 11 instance, with the Department of Revenue for
 12 the collection of those taxes?
 13 A. No, we have not.
 14 Q. Have you done the same or entered into any
 15 negotiations with the legislature with regard
 16 to the collection of those gross receipts
 17 taxes?
 18 A. No, we have not.
 19 Q. And have you entered into any negotiations with
 20 the governor with regard to the collection of
 21 those gross receipts taxes?
 22 A. No, we have not.
 23 Q. Have you requested of any of those parties a
 24 meeting for the purpose of entering into
 25 negotiations for the collection of those taxes?

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1 A. No, we have not.
 2 Q. In other words, the only thing that is in the
 3 record at this time is merely a proposal that
 4 you would be willing to enter in negotiations.
 5 Is that correct?
 6 A. That's correct.
 7 MR. HOSECK: Mr. Chairman, on the basis of
 8 this testimony I'm going to move that the
 9 record be kept open for a period of two weeks
 10 from the time of this hearing to give these
 11 parties the opportunity to consummate an
 12 agreement with the appropriate authorities,
 13 first for the purpose of addressing the
 14 regulatory and complaint handling issues, and,
 15 secondly, for the purpose of handling taxation
 16 issues.
 17 MS. WIEST: Any objection?
 18 MS. DUCHENEAUX: I would object on the
 19 basis of time. Why two weeks? My
 20 understanding is that the decision is to be
 21 made by August 1. Is that correct?
 22 MS. WIEST: That's correct. But after
 23 this hearing we'll be going into briefing, and
 24 then the Commission would make an oral decision
 25 and then we have to have the written decision

1 out by August 1.
 2 MS. DUCHENEAUX: Unless we can be assured
 3 that the state would be willing to work that
 4 quickly to discuss these matters and try to get
 5 some agreements in place.
 6 MS. WIEST: I believe we could just leave
 7 the record open and then it's up to you to see
 8 if you could complete any negotiations.
 9 MR. HOSECK: May I respond?
 10 MS. WIEST: Certainly.
 11 MR. HOSECK: Quite frankly the two-week
 12 period is an arbitrary figure. I'm not being
 13 held to that in any manner. However, the
 14 Commission is under the time constraints under
 15 Senate Bill 240. And, secondly, the staff's
 16 position that you probably have not made the
 17 offer to the proper parties in this at all, and
 18 that all we're doing is extending you the
 19 opportunity to the parties, and more
 20 particularly to Owl River Telephone, to see if
 21 this matter can be hammered out within the time
 22 restraints that the Commission has.
 23 MS. DUCHENEAUX: I would still think that
 24 we'd need more time than two weeks.
 25 COMMISSIONER SCHOENFELDER: Mrs.

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1 Ducheneaux, this isn't like you just heard
 2 about it today, because at McIntosh I
 3 specifically asked Mr. Williams to bring
 4 forward the agreements that had been made, and
 5 you know that we cannot make a decision about
 6 agreements if the agreements aren't signed and
 7 aren't finalized. Isn't that true?
 8 MS. DUCHENEAUX: That's true.
 9 MS. WIEST: At this point I believe we
 10 could leave the record open for two weeks, and
 11 at the end of that two-week period we can
 12 discuss this matter further if it needs to be.
 13 MR. FERGEL: Commission? I would only
 14 object to that on the basis that after
 15 negotiations are completed that if there is a
 16 negotiated agreement that McIntosh and
 17 Morristown and Timber Lake exchanges would be
 18 able to review those and have comment or have
 19 some type of hearing process based on that. We
 20 don't know what the affect of any of those
 21 agreements will be, and we need to have time to
 22 analyze them and work them through.
 23 MR. HOSECK: May I respond?
 24 MS. WIEST: Certainly.
 25 MR. HOSECK: The only thing I would say in

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1 response to that is that if there are any
2 negotiations to occur, they're going to have to
3 occur through the channels as provided by law
4 for enactments of compacts or treaties between
5 tribal authorities and the state. Whether or
6 not the local authorities have any input or not
7 is a matter of law, and you would have to rely
8 on your own research as far as that's
9 concerned. But if these things are to be
10 formalized they're going to have to be done in
11 a manner that treaties with tribal authorities
12 are normally accomplished.

13 MR. FERGEL: I realize that, Mr. Hoseck,
14 but what I'm arguing is that depending on how
15 those affect the factors of Senate Bill 240,
16 McIntosh, Morristown and Timber Lake exchange
17 should have an opportunity to express concern,
18 or if not concern, their willingness to go
19 along with those.

20 MS. WIEST: Right now what we will do is
21 we'll leave the record open for two weeks after
22 these proceedings and then we will see what has
23 developed, and then at that time if there are
24 any objections, Mr. Fergel, you can make them
25 then. It is five to twelve. We're going to

1 before the Commission now?

2 A. Yes.

3 Q. And did that testimony take place in Alcester,
4 South Dakota?

5 A. Yes, it did.

6 Q. Do you have anything to add in addition to that
7 previous testimony?

8 A. Not at this time.

9 MR. NELSON: I would submit the witness
10 for cross-examination and ask the Commission
11 recognize and adopt his previous testimony.

12 MS. WIEST: Yes. That's in the record.
13 Mr. Todd?

14 MR. TODD: No questions.

15 MS. WIEST: Mr. Fergel? Mr. Macy? Miss
16 Rogers? Mr. Hertz?

17 MR. HERTZ: I have no questions, because
18 Mr. Aklund was cross-examined on his testimony
19 at the Alcester hearing, and since he's offered
20 no additional testimony from what was offered
21 at that hearing, I have no questions.

22 MS. WIEST: Mr. Hoseck?

23 MR. HOSECK: Yes.

24 CROSS-EXAMINATION BY MR. HOSECK:

25 Q. Mr. Aklund, realizing Beresford is a

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1 break for lunch. Our schedule states that we
2 are to do Alcester at 1:00. So we will resume
3 again at 1:00.

4 MR. HOSECK: I'd like for the record to
5 state I concluded my cross-examination of
6 Mr. Williams. Thank you.

7 (A noon recess was taken.)

8 MS. WIEST: Mr. Nelson, call your
9 witness.

10 MR. NELSON: I would call the manager,
11 Wayne Aklund.

12 WAYNE AKLUND,
13 called as a witness, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. NELSON:

16 Q. Wayne, would you state your name for the
17 record, please?

18 A. My name is Wayne Aklund, manager Beresford
19 Telephone.

20 Q. How long have you been the manager of Beresford
21 Telephone?

22 A. Twenty-three years I've been manager at
23 Beresford.

24 Q. You previously testified in front of the Public
25 Utilities Commission concerning the issues

1 municipality, the scope of my questions and
2 issues is a little bit different. I would like
3 to have you describe for the Commission what
4 steps have been taken by the City of Beresford
5 should the sale be approved to insure that the
6 provisions of Senate Bill 240 will be
7 implemented. I'm speaking of provisions in
8 Senate Bill 240, I'm talking about such things
9 as 911, E911, distance learning, things of that
10 nature. Could you describe for the Commission
11 what actions have been taken?

12 A. What we planned to do, if the sale was
13 consummated, would be to upgrade the cable to
14 the latest technology, first of all, getting
15 rid of aerial cable for buried cable, which
16 there is a very small amount of.

17 Within the 18-month period we would put a
18 digital switch to match the switch with
19 Beresford at the Alcester location, probably in
20 the remote situation.

21 We would begin to eliminate repeat calls
22 in the local loop lines to allow for high speed
23 data information which will be required.

24 The exchange has already chosen to go to
25 the Union County 911 Center, and I see no

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1 Baltic?

2 MR. HERTZ: No, we do not have any
3 witnesses for Baltic at this time. Again, I do
4 not waive the right to challenge at some future
5 proceedings or alternate jurisdiction the data
6 that's presented here today, but our challenge
7 in front of the Commission is primarily legal
8 in nature as to the capacity of Beresford to be
9 able to purchase the Alcester exchange, and
10 that is Alcester's position in this matter.

11 MS. WIEST: Any members of the public from
12 Alcester who wish to give public testimony? If
13 not, we will take a 10-minute break and resume
14 with Cheyenne.

15 (A recess was taken).

16 CHAIRMAN STOFFERAHN: Back on the record.

17 MS. WIEST: U S WEST, do you have any
18 questions of Mr. Williams?

19 MR. WELK: No.

20 MS. WIEST: Mr. Aberle?

21 MR. ABERLE: Yes, I do.

22
23 J.D. WILLIAMS,
24 recalled as a witness, having been previously
25 sworn, testified as follows:

1 A. I think there's a legal case that says we
2 can't. I think a legal opinion is needed,
3 versus I can't answer that.

4 Q. You also will be doing business on the Standing
5 Rock Indian Reservation. Correct?

6 A. Correct.

7 Q. Have you obtained any type of charter or
8 approval to operate on Standing Rock Indian
9 Reservation?

10 A. Discussions are in place right now, and we hope
11 to assume that authority soon.

12 Q. But at best, all you have is a letter of
13 recommendation from Jesse Taken Alive, tribal
14 chairman?

15 A. Correct.

16 Q. He would not have individual authority to grant
17 Cheyenne River Sioux Tribe authority to do
18 business on that particular reservation.

19 Correct? Not without tribal council --

20 A. That would be tribal council approval, but like
21 I said, process has begun, and hopefully soon
22 we will have that approval.

23 Q. But in any event, the Cheyenne River Sioux
24 Tribe claims a sovereign entity within its
25 reservation boundaries, but beyond that it does

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1 CROSS-EXAMINATION BY MR. ABERLE:

2 Q. You submitted a financial forecast. I see that
3 starts with 1996. Is that the date you plan on
4 starting your operations as Owl River?

5 A. We hope so.

6 Q. You testified you've already incorporated as a
7 tribally chartered corporation?

8 A. Correct.

9 Q. Have you obtained a state chartered
10 incorporation or anything of that nature?

11 A. We have not.

12 Q. You're going to be doing business outside the
13 reservation of the boundaries of the Cheyenne
14 River Indian Reservation. Correct?

15 A. Correct.

16 Q. And admittedly, that's outside the
17 jurisdictional boundaries of the Cheyenne River
18 Sioux Tribe?

19 A. It is.

20 Q. And that would be within the State of South
21 Dakota. Is that not correct?

22 A. That's correct.

23 Q. So you would have no specific authority to do
24 any type of business off the reservation
25 boundaries. Is that not correct?

1 not have any other type of authority, either
2 from the State of South Dakota or Standing Rock
3 Sioux Tribe to go on doing business beyond the
4 reservation boundaries?

5 A. That's correct.

6 Q. Have you reviewed your financial forecast?

7 A. I have.

8 Q. And is that accurate?

9 A. Yes, it is.

10 Q. You testified earlier that you made proposals
11 to the State of South Dakota, or at least
12 through the Public Utilities Commission, for
13 gross receipts taxes. Correct?

14 A. Correct.

15 Q. That is not included in your financial
16 forecast. Is that not correct?

17 A. That is correct.

18 Q. So your financial forecast showed you were
19 going to be paying no type of taxes, so that
20 would decrease your projected revenues.

21 Correct?

22 A. Correct.

23 Q. Do you have your financial forecast handy?

24 A. No, I do not.

25 Q. Could you get that? I would like to refer to

1 A. Correct.
 2 Q. That very closely corresponds to the increase
 3 in intrastate increases. If you take the
 4 \$122,000 increase, I believe the other is about
 5 \$150,000. So about all but \$30,000 would be
 6 coming from increased intrastate charges.
 7 A. That's correct.
 8 Q. You heard the testimony of Mr. McKellips,
 9 didn't you?
 10 A. I was not in the room when he was testifying.
 11 Q. Some of the things that he mentioned that did
 12 not seem right with regard to the Alcester
 13 exchange involved the company that was
 14 acquiring the Alcester exchange would be -- it
 15 would be financed with no recourse to the
 16 company, the parent company. That would be
 17 similar to this situation. Correct?
 18 A. That's correct.
 19 Q. The Cheyenne River Telephone Authority would
 20 have none of its money invested in this
 21 subsidiary. Correct?
 22 A. We will have approximately a million dollars
 23 invested in the beginning process, but the
 24 subsidiary Owl River Telephone will be paying
 25 that back over a period of time back to the

1 operating revenue for tribal government?
 2 A. I'm oblivious to that plan.
 3 Q. You've reviewed the financial forecast, and I
 4 believe it ends on Page 2 relating to
 5 dividends.
 6 A. Correct.
 7 Q. At the very bottom of the page it says, "The
 8 forecast assumes the subsidiary will pay the
 9 tribe through the Authority a dividend equal to
 10 25 percent of the current earnings." Is that
 11 not correct?
 12 A. That's correct.
 13 Q. So 25 percent of the net earnings would not be
 14 reinvested in the exchanges. It would go
 15 directly to the tribes for its operation of
 16 tribal government. Correct?
 17 A. A little history on that. Previous allowable
 18 distributions that have went from the telephone
 19 authority to the tribal government has went to
 20 economic development projects within the area,
 21 citing portions of money have went into the
 22 local grocery store. Portions have went into
 23 the TV company located in Cherry Creek.
 24 Q. But that would be discretionary with the tribal
 25 government. Correct?

1 parent company.
 2 Q. Okay. But ultimately it's the rate consumers
 3 that are going to pick up the full bill on
 4 this. Correct?
 5 A. Correct.
 6 Q. And there would be no recourse in the event of
 7 default. I believe you're going from CoBank at
 8 9 percent. In the event there's a default,
 9 there would be no recourse to the Cheyenne
 10 River Telephone Authority. Correct?
 11 A. Correct.
 12 Q. That would be paid by the consumers in Timber
 13 Lake, McIntosh and Morristown. Correct? Is
 14 that not correct, J.D.?
 15 A. That's correct.
 16 Q. So the rate payers are guaranteeing this entire
 17 loan and are expected to repay the entire
 18 loan. Is that correct?
 19 A. Correct.
 20 Q. They will never be brought into the telephone
 21 authority, per se. There's no plans for
 22 merging the two companies?
 23 A. No plans to do that.
 24 Q. And isn't it also a projection in the operating
 25 plan that this is going to be a source of

1 A. That's right.
 2 Q. You submitted to the Public Utilities
 3 Commission a Proposed Memorandum of Agreement
 4 relating to election of the gross receipts
 5 tax. Correct?
 6 A. The proposed memorandum agreement, Steve,
 7 covers only the regulatory issues. We have
 8 only made a proposal concerning the taxes.
 9 There is no documentation presented, other than
 10 testimony stating that we've done through the
 11 hearing process.
 12 Q. Then let me summarize your proposal. You have
 13 suggested that there be an agreement entered
 14 into between the Cheyenne River Sioux Tribe and
 15 the State of South Dakota, through whatever
 16 mechanism that's going to be allowed, two weeks
 17 additional time, and the gross receipts would
 18 be collected and then distributed based upon
 19 racial composition of the people within Dewey
 20 and Corson County?
 21 A. Correct.
 22 Q. Is the Telephone Authority currently collecting
 23 gross receipts tax in the Eagle Butte or other
 24 exchanges it owns?
 25 A. We are not.

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1 Q. Would that proposed agreement involve also
2 collecting gross receipts tax in those areas
3 and then dividing that upon the same
4 percentage?

5 A. That has not been discussed in any board
6 meetings.

7 Q. Well, the reason why I'm asking that is let's
8 say census data and other data shows the
9 non-Indian populations in these exchanges is
10 actually closer to 75 or 80 percent non-Indian,
11 whereas the population in the counties is
12 basically the reverse of that, and under your
13 proposal you would be taking the higher rate.
14 Is that not correct?

15 A. That's correct.

16 MR. ABERLE: I just have one other thing.
17 It's more of a procedural matter. I know the
18 Telephone Authority had withdrawn their request
19 to submit the petitions to the Public Utilities
20 Commission. I believe that there has been a
21 proper foundation laid, and I would
22 specifically move for admission of those
23 petitions with the foundational explanation
24 that Mr. Williams has provided to the Public
25 Utilities Commission. It's my understanding

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1 that Mr. Fergel will also be withdrawing his
2 objections to the admission of those petitions,
3 with the understanding and clarifications that
4 were made as to which exchanges some of these
5 signators resided in. Correct me if I'm wrong
6 on that. I would move for the admission of
7 that document, those documents.

8 MS. DUCHENEAUX: We have withdrawn and
9 we're not resubmitting it.

10 MS. WIEST: Yes. Since they were
11 withdrawn, we won't receive that exhibit.

12 MR. ABERLE: That's all I have.

13 CROSS-EXAMINATION BY MR. GERDES:

14 Q. Mr. Williams, one more question with reference
15 to the financial projections, which I
16 understand to be Exhibit 112. In 1966 and
17 beyond you list \$133,861 as Universal Service
18 Fund support. What does the Cheyenne River
19 Sioux Tribe Telephone Authority now receive in
20 terms of USF funds?

21 A. I'll defer that question to Kevin Doyle
22 tomorrow.

23 Q. The other question I have is on the next page,
24 toward the bottom. It talks about cash flows
25 from financing activities, and I note a capital

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1 contribution of CRSTTA. What do those initials
2 stand for?

3 A. What page are you on, sir?

4 Q. The pages aren't numbered, but it's at the top,
5 it's "CRST Telephone Subsidiary (a proposed
6 entity)."

7 A. I believe what you're looking at is Cheyenne
8 River Sioux Tribal Telephone Authority.

9 Q. That's what those initials stand for. So the
10 Telephone Authority is going to contribute
11 about a million dollars to get this thing
12 started. Is that basically it?

13 A. That's correct.

14 MR. GERDES: That's all I have.

15 MS. WIEST: Mr. Nelson? Mr. Maher?

16 MR. MAHER: Yes, a couple questions.

17 CROSS-EXAMINATION BY MR. MAHER:

18 Q. Mr. Williams, what steps has CRST taken to
19 assure special services for the provision of
20 cellular-like services for use in the provision
21 of mobile phone and paging services will be
22 available when you take control of these
23 switches and U S WEST properties?

24 A. A brief history of what CRST Telephone
25 Authority is involved in, we have our own

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1 mobile telephone service with four towers that
2 cover our entire exchange area. We also are
3 limited partners in Commnet 2000 at the
4 Mobridge site in the cellular business. I
5 believe once we hopefully approve and become
6 owners, that those are plans in the future to
7 provide those type of mobile services to the
8 area.

9 Q. And what steps has CRST taken to assure the PUC
10 that these steps will be taken in the future?

11 A. Other than stating the history of CRST
12 Telephone, that's what we're basing the
13 assurance on, that we will continue to develop
14 those services as our paying subscribers are
15 demanding those services.

16 Q. And you referenced, I believe in your earlier
17 testimony, a five- and ten-year plan?

18 A. That's correct.

19 Q. Are those plans, are those incorporated —
20 well, are your plans for providing these
21 services incorporated in that plan?

22 A. They are not.

23 Q. Is that — do you anticipate they will become
24 part of that plan?

25 A. We believe they will be.

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1 Q. But at any rate, that's not part of this
 2 record. Is that right?
 3 A. That's right.
 4 MR. MAHER: No further questions.
 5 MS. WIEST: Mr. Todd? Mr. Fergel?
 6 CROSS-EXAMINATION BY MR. FERGEL:
 7 Q. I don't really have that many questions beyond
 8 what Mr. Hoseck and Mr. Aberle asked. I would
 9 just ask one question, Mr. Williams. Will you
 10 not concede that if Owl River Telephone and the
 11 CRSTTA do not come to agreements or don't have
 12 agreements in place that are enforceable and
 13 binding and agreements concerning payment of
 14 gross receipts taxes or collection of sales
 15 tax, then, in fact, there will be a very real
 16 negative tax effect or revenue effect on the
 17 County of Corson and the City of McIntosh?
 18 A. As I stated in the McIntosh testimony, yes, we
 19 know that. To follow up on that testimony that
 20 was provided in that hearing is that we have
 21 been very upfront and proactive in submitting
 22 these types of methods in which to reach some
 23 type of resolution, because as we stated, we
 24 know one of your concerns is damaging economic
 25 development, taking monies away from education

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1 and all of those concerns, which are genuine to
 2 us, too.
 3 We realize you folks are going to be
 4 customers of the company. In order for our
 5 company to survive, we have to put back into
 6 the community, and I think we demonstrate that
 7 in CRST Telephone, and I think that will
 8 continue to be emphasized with Owl River
 9 Telephone.
 10 Hopefully we can reach very quickly some
 11 resolution to both of these agreements. We
 12 will work hard with whether it's the PUC or
 13 South Dakota Department of Revenue or whoever
 14 else is involved to try to get some resolution
 15 to that real soon.
 16 Q. But if those agreements don't come about, there
 17 will be a very real negative affect on the
 18 County of Corson and the City of McIntosh?
 19 MS. DUCHENEAUX: Objection. That's been
 20 asked and answered.
 21 MS. WIEST: Sustained.
 22 MR. FERGEL: No further questions.
 23 MS. WIEST: AT&T?
 24 CROSS-EXAMINATION BY MR. LOVALD:
 25 Q. Mr. Williams, I need a clarification concerning

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1 one item of your testimony this morning. I
 2 believe you indicated there had been some
 3 discussion or some negotiation with the PUC
 4 over an agreement concerning jurisdiction by
 5 the PUC, and I heard consumer complaints
 6 mentioned. Is one of the other issues involved
 7 in that negotiation intrastate access rates?
 8 A. No. That has never been discussed.
 9 Q. So what I would like to find out today, is it
 10 your position that this new entity that's going
 11 to be running these three exchanges will not be
 12 subject to PUC jurisdiction concerning
 13 intrastate access?
 14 A. I think that's an item that needs to be
 15 discussed, and that's the reason that document
 16 has been forwarded to the PUC for some comment
 17 and feedback, which for the record, I'd like to
 18 establish, in visiting with Mr. Bullard today,
 19 that no staff has ever gotten back to us so we
 20 could keep this working relationship alive and
 21 keep the wheels rolling. That is not
 22 happening. I just want that for the record.
 23 Q. But I guess we're looking for information.
 24 We're trying to determine whether I think every
 25 other entity proposing a purchase is indicating

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1 they are subject to jurisdiction of the PUC
 2 concerning intrastate access. I take your
 3 comments as indicating there's at least a
 4 question as to whether you're going to make
 5 that commitment to us today.
 6 A. That's correct.
 7 Q. Let's move to interstate access. I think the
 8 comment in your financial projections was that
 9 you were going to follow the FCC and the NECA
 10 rates. What is your position concerning the
 11 jurisdiction of the FCC?
 12 A. I refer that to legal counsel.
 13 Q. You have no opinion?
 14 A. That's correct.
 15 Q. Again, referring to Exhibit 112, this would be
 16 your cash flow, as I understand it, the author
 17 of that is going to be here to testify
 18 tomorrow.
 19 A. That's correct.
 20 Q. And again, that name is?
 21 A. Kevin Doyle.
 22 Q. Where is he from?
 23 A. Sioux Falls, from the firm of Eide Helmeke.
 24 Q. In that particular cash flow, between 1988 and
 25 1999 intrastate access revenues are only

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1 it apparently had been prepared in, so it
 2 wasn't produced.
 3 A. We were just never asked to produce it. I
 4 never did receive the request from AT&T.
 5 Q. In terms of your existing telephone company,
 6 can you provide us with the 1993 unseparated
 7 loop revenue requirement that's been provided
 8 in NECA for your existing properties?
 9 A. Yes, we could.
 10 Q. Would you do that today?
 11 A. I could try, but I'm not going to get it here.
 12 Q. How about by tomorrow before Mr. Doyle
 13 testifies?
 14 A. The bad thing about that is, as we get done
 15 here, the offices, the main telephone company
 16 and the cost consultants will be closed for the
 17 weekends. There are problems surrounding
 18 that. We can get it to you I'm sure by Monday.
 19 Q. Again, Mr. Williams, that was one of the -- it
 20 was Question 3(A) of the Data Request, that
 21 Mr. Brown, acting on behalf of all the
 22 companies, did not respond to. Again, we'd
 23 like that information if it's available.
 24 A. Right. CRST Telephone has no problem
 25 submitting that to you. If just given a chance

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1 to, we could get that for you.
 2 Q. Are you able to give me any information today
 3 in terms of how the either intra or interstate
 4 access rates have been calculated by the CRST
 5 Telephone Exchange in your revenue
 6 projections?
 7 A. No. Like I said, I'll refer that question to
 8 Kevin Doyle.
 9 Q. He'll be able to tell us precisely how those
 10 revenues have been projected and what the
 11 access rates are that are being proposed to be
 12 charged?
 13 A. I hope he can. I'm sure he can.
 14 MR. LOVALD: No further questions.
 15 MS. WIEST: Commissioners?
 16 BY VICE-CHAIRMAN BURG:
 17 Q. I have just a couple. You earlier, before we
 18 broke for lunch, you were testifying -- you
 19 testified a little bit about the penetration
 20 rate. Can you tell me the penetration rate for
 21 CRST Telephone?
 22 A. We figure the penetration for our exchange is
 23 at 72 percent.
 24 Q. So 72 percent of the households in CRST has the
 25 telephone?

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1 A. Yes.
 2 Q. You said you would -- you were talking about
 3 the collection of the gross receipts tax. Are
 4 you talking about -- who would collect it from
 5 whom, I guess is what I'm getting at?
 6 A. We are proposing to collect it from the entire
 7 exchange, every telephone customer, as much as
 8 anybody else would.
 9 Q. But the gross receipts tax is not paid by
 10 customers. It's paid by the companies, if I
 11 understand right.
 12 A. Right. It's paid, as I understand it, on the
 13 gross revenues that you received. So I mean
 14 that would entail all income from all your
 15 customers.
 16 Q. Okay. So you would -- and then that follows up
 17 with the other question that I had. The tax
 18 agreement that you are talking about
 19 implementing, is there a reason that has to be
 20 implemented between you and the Department of
 21 Revenue or the state, or could you make an
 22 agreement directly with the counties and cities
 23 involved? Do you know that?
 24 A. I don't know that. I think that's been a big
 25 question of anybody you ask is who is the

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1 authority? I think that's one of the questions
 2 that we keep coming back to is how come CRST
 3 Telephone hasn't developed this, or why haven't
 4 those negotiations begun, and why isn't that
 5 testimony submitted? That is an obvious
 6 problem is that how do we spin the wheel and
 7 where is the wheel?
 8 VICE-CHAIRMAN BURG: That's all.
 9 BY COMMISSIONER SCHOENFELDER:
 10 Q. Mr. Williams, since you've been interrupted
 11 I've had some questions. First of all, you
 12 submitted as an exhibit a phone bill, and I
 13 remember some discussion about a phone bill
 14 when we were in McIntosh at that hearing, but I
 15 don't remember what the discussion was about.
 16 I don't want to belabor and drag this out
 17 further, but I thought maybe you'd like to
 18 explain something more about what the issue was
 19 with the phone bill.
 20 A. The issue was we were presented with a front
 21 sheet from a customer from Isabel that said the
 22 total bill was \$22.75. What I told the people
 23 at the hearing was there's no way I could
 24 depict what was included in those charges
 25 without the backup sheet.

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1 What we did, we went in and found two
2 customers that came up to \$22.75. One of those
3 customers happens to be a farm/ranch customer.
4 The other one is a local R-1 customer,
5 residence. The difference is they select their
6 own calling features. I believe the farm
7 residence got an off-premise extension.

8 The key, what we're showing is that each
9 bill is going to differ according to the
10 customer's preferences, and that we do have a
11 tariff rate for \$15.50 for one rate, and \$18.75
12 for a farm/ranch rate. That's all we were
13 trying to depict to try to explain the process
14 as promised in the McIntosh.

15 Q. And that does reflect that with some add-ons?

16 A. Correct.

17 Q. So the add-ons are what make the difference.

18 Also at the McIntosh hearing, and I know
19 we've discussed taxes so many times that people
20 are tired of them. I want to go over it one
21 more time. Please bear with me. McIntosh I
22 believe collects a sales tax. Tribes do not or
23 your Tribal Authority or Owl River Telephone
24 Company would not pay that sales tax? I need
25 to get this straight.

1 Authority, I guess, if that agreement were
2 reached, how binding is that on the tribe or on
3 the tribal council, and can you bind future
4 councils with that? In other words, next year
5 or the year after when there's an election, can
6 they revoke that agreement?

7 Now, if that's not a proper question for
8 you, I'd like to have your counsel and other
9 counsel brief that, at least. I need that
10 question answered before I can make a
11 decision. If Miss Ducheneaux thinks that
12 should be briefed by counsel, that's fine.
13 That's an issue we have to have answered.

14 MS. DUCHENEAX: We have repeatedly -- we
15 have testified that we have existing today tax
16 collection agreement with the state, and it is
17 binding. We do collect the tax. We do pay it
18 into the state, and we receive a payment back.
19 We also testified at McIntosh that we have
20 enforced that tax agreement through our Tribal
21 Court against our own tribal members who refuse
22 to pay it. We're being asked to give these
23 assurances. What assurances, on the other
24 hand, would we have from the state on anything,
25 and how binding is that?

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1 A. I've had this explained to me by legal counsel
2 four or five times, because I knew I was going
3 to be asked this. We in this proposed taxation
4 agreement, we're willing to work that into some
5 type of payment method so that those taxes can
6 be collected, as per law allows us to. But I
7 think there is some remedy to the situation
8 that will benefit the city sales tax for these
9 towns. We need to get to the point that it's
10 included in one tax agreement, and we need to
11 start working on those issues. I think this is
12 one of those that can be included in that.

13 Q. But I need to go a little bit further. I need
14 to ask you this question, and I need some sort
15 of an answer. Either that or before the
16 lawyers all go berserk in here, maybe the
17 lawyers need to brief the issue, and it's the
18 taxation issues as deals with the jurisdiction,
19 the tribal jurisdiction as opposed to state
20 jurisdiction, and how binding any agreement
21 would be.

22 If the State of South Dakota or the City
23 of McIntosh or everybody got together and made
24 an agreement with the tribe and, therefore,
25 with the Tribal Authorities, Telephone

1 COMMISSIONER SCHOENFELDER: I want to know
2 that, also. I want to know how binding those
3 agreements are, not just for now. When we're
4 talking about a telephone sale here, we're
5 talking about years into the future, and we're
6 talking consumers both of the Indian
7 jurisdiction and White jurisdiction for a long
8 time. That's a big concern of mine. I really
9 want to have that issue briefed if we possibly
10 can have that so I have it in writing before me
11 before the decision is made.

12 MS. DUCHENEAX: What would the time frame
13 be on that?

14 MS. WIEST: Whenever the briefs are due.

15 COMMISSIONER SCHOENFELDER: Rolayne said
16 we'll discuss that at the end of the hearing.

17 I also understand this is another issue we
18 need to have answered. I understand the
19 statement of support from the Standing Rock
20 Tribe. I believe, though, you still do not
21 have a negotiated signed agreement as to
22 jurisdiction there. I'm not sure we need to be
23 concerned about that, but I would like to know
24 more about that.

25 And the resolution is just that. It's

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1 RE CROSS-EXAMINATION BY MR. FERGEL:
 2 Q. Mr. Williams, you said that the 25 percent is
 3 based on a decision of the board of directors.
 4 How are the board of directors placed in their
 5 positions? Who appoints the board of
 6 directors, or are they elected?
 7 A. The board of directors of Owl River come from
 8 the CRST Telephone Authority, come from that
 9 board membership. They have a staggered term
 10 that's appointed by the Cheyenne River Sioux
 11 Tribal Council. So Owl River board comes from
 12 the Cheyenne River telephone board.
 13 Q. Which, in effect, is appointed by the tribal
 14 council?
 15 A. Correct.
 16 Q. So basically the tribal council still would
 17 have some control over whether or not the 25
 18 percent would be paid.
 19 A. Not under the terms of the organizational
 20 charter and bylaws. That's the decision of the
 21 appointed board.
 22 Q. But the board is appointed by the tribal
 23 council?
 24 A. Correct. They go through a nomination
 25 process.

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1 MR. FERGEL: No further questions.
 2 MS. WIEST: Mr. Hoseck?
 3 RE CROSS-EXAMINATION BY MR. HOSECK:
 4 Q. I have one follow-up question. Mr. Williams,
 5 as a point of clarification, when you submitted
 6 the Memorandum of Understanding into the record
 7 on May 25 in McIntosh, was it your intent at
 8 that time, by including that document in the
 9 record, that that be a formal proposal to the
 10 Public Utilities Commission or its staff?
 11 A. That is correct.
 12 MR. HOSECK: Thank you.
 13 MS. WIEST: Then that brings up a
 14 question. Has the Memorandum of Understanding
 15 been submitted to the Commission? I don't know
 16 that it was submitted at McIntosh.
 17 MR. HOSECK: I thought that it was
 18 submitted at McIntosh and made a part of the
 19 record there, if my memory is incorrect.
 20 MS. WIEST: I don't have any testimony
 21 submitted by Mr. Williams. He testified at the
 22 hearings. So I don't believe there's a
 23 Memorandum of Understanding. It's not on the
 24 record or before the Commission. I believe it
 25 was given to staff, but the commissioners have

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1 not seen that.
 2 MR. HOSECK: I was under the impression it
 3 was made part of the record, but I don't know
 4 that for sure.
 5 MS. DUCHENEAUX: As I recall, it was
 6 submitted at McIntosh when Mr. Williams
 7 concluded his testimony. Now, I don't know.
 8 MS. WIEST: No. I only have two exhibits
 9 from the McIntosh hearings.
 10 MS. DUCHENEAUX: Which were those?
 11 MS. WIEST: One was the Petition and the
 12 other was the Corson County Environmental
 13 Review Plan. I don't believe that his
 14 testimony or any of the attachments were ever
 15 offered to the Commission and received by the
 16 Commission in any of the hearings.
 17 MR. WELK: Let's just mark it and make it
 18 a part of the record.
 19 MS. WIEST: Right. Do you have a copy of
 20 the memorandum?
 21 THE WITNESS: We'll get it to you.
 22 MR. WELK: You can use my copy, if you
 23 want. I have a copy.
 24 MS. DUCHENEAUX: May I? There is an
 25 accompanying resolution that goes with it that

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1 we'll have to get that to you, too. We assumed
 2 since we submitted it, there would be no
 3 further need to resubmit it.
 4 MS. WIEST: We need to get an exhibit
 5 number, and we'll take care of it. Later on
 6 we'll bring it up and see if there are any
 7 objections to that. Do you have any further
 8 witnesses for CRST?
 9 (Witness excused).
 10 MS. WIEST: Any further witnesses?
 11 MS. DUCHENEAUX: Mr. Doyle is here, but he
 12 will go on tomorrow instead. So we have no
 13 further witnesses.
 14 MS. WIEST: Then we'll go to the
 15 intervenors. Mr. Fergel, do you have any
 16 witnesses?
 17 MR. FERGEL: At this time we'd like to
 18 call the Corson County Auditor.
 19 BOBBI JO VILHAUER,
 20 called as a witness, being first duly sworn,
 21 testified as follows:
 22 DIRECT EXAMINATION BY MR. FERGEL:
 23 Q. Miss Vilhauer, could you state your name and
 24 your occupation, please?
 25 A. My name is Bobbi Jo Vilhauer. I'm the Corson

TAX COLLECTION AGREEMENT

This agreement, dated June 17, 1976, by and between the Department of Revenue of the State of South Dakota (the "State") and the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Indian Reservation (the "Tribe"), an Indian tribe organized under the Federal Indian Reorganization Act:

WHEREAS, the Cheyenne River Sioux Tribe has jurisdiction to tax sales by Indians and sales by non-Indians to Indians within the limits of the Cheyenne River Sioux Indian Reservation, and

WHEREAS, the State of South Dakota has jurisdiction to tax sales by non-Indians to non-Indians within the limits of the Cheyenne River Sioux Reservation, and

WHEREAS, the Department of Revenue is authorized, pursuant to SDCL 10-12A, to enter into tax collection agreements with Indian tribes;

NOW THEREFORE, in order to implement effectively their respective tax jurisdictions and derive therefrom significant revenues to be expended for public purposes and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Collection of Tribal Retail Sales, Service and Use Tax and Tribal Cigarette Tax. The State hereby agrees to collect on behalf of the Tribe the various taxes imposed by the Cheyenne River Sioux Tribal Retail Sales, Service and Use Tax

Tax Collection Agreement
Page 2

Ordinance (the "Sales Tax Ordinance") and the tax upon cigarettes imposed by the Cheyenne River Sioux Tribal Cigarette Tax Ordinance (the "Cigarette Tax Ordinance"), and issue the permits and stamps provided for in the Ordinances; provided, however, the collection of tax imposed by the Cigarette Tax Ordinance shall be contingent upon enactment of the Ordinance by the Tribe in July, 1976.

2. Remittance of Tax Proceeds. The State agrees to remit to the Tribe on a quarterly basis an amount equal to 50% of the total proceeds collected by the State with respect to the preceding quarter of the taxes imposed by the Ordinances, (with respect to taxable transactions within the Cheyenne River Sioux Indian Reservation) the tax imposed by the South Dakota Retail Occupational Sales and Service Tax Act and the South Dakota Cigarette Tax. SDCL 10-50. The State may retain out of its quarterly remittances to the Tribe a total amount not in excess of one percent (1%) of the total annual proceeds of the taxes imposed by the Ordinances. Remittances shall be by certified check, payable to the order of the Cheyenne River Sioux Tribe.

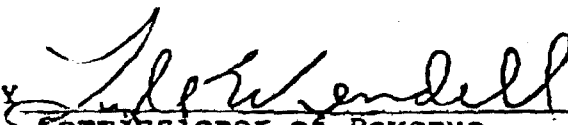
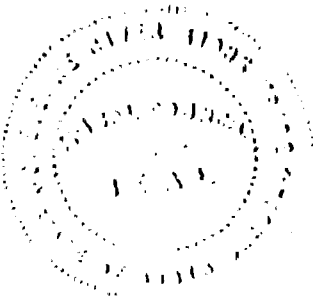
3. Term. This Agreement shall become effective on July 1, 1976, shall be for a term of one (1) year and shall renew thereafter for a term of one (1) year on the same terms and conditions unless terminated in writing by either party on or before June 1.

Tax Collection Agreement
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IN WITNESS WHEREOF, the State and the Tribe have caused
this Agreement to be executed and delivered by their respective
officers thereunto duly authorized.

THE DEPARTMENT OF REVENUE OF
THE STATE OF SOUTH DAKOTA

BY


Commissioner of Revenue


(TRIBAL SEAL)

CHEYENNE RIVER SIOUX TRIBE OF
THE CHEYENNE RIVER SIOUX RESERVATION

BY


Chairman

BY


Secretary